



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT, MNSD, RPP

Introduction

This hearing dealt with the applicants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38;
- an order requiring the landlord to return the tenant's personal property pursuant to section 65; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The parties confirmed that they had exchanged their documentary evidence.

Preliminary Issue – Jurisdiction

The respondent testified that he has been renting this unit out as a vacation rental and Airbnb since 2007. The respondent testified that he advertises the unit as such on Craigslist and Kijiji. The respondent testified that the terms of his rentals are very flexible and not in line with the Residential Tenancy Act. The respondent testified that the unit was fully furnished with bed linens, plates, silverware and other items not associated with regular rentals. The respondent testified that the applicants were advised that this is a seasonal vacation rental and that they had to move by a specific time as he had Airbnb guests arriving at that time. The applicants testified that they are relying on the rental agreement which states that they are tenants so that the Branch may address this issue.

Analysis

I have reviewed and considered the testimony and documentation submitted for this hearing. Although the applicants rely on the agreement whereby they are identified as tenants, the evidence and mechanics of this arrangement do not support their position. I find that the evidence and testimony supports the respondents' position that this is a well-established and long running vacation rental and was presented and advertised as such.

What this Act does not apply to

- 4** This Act does not apply to
- (e) living accommodation occupied as vacation or travel accommodation,
 - (f) living accommodation provided for emergency shelter or transitional housing,

Based on the above facts I find that this is a vacation rental and therefore not covered under the jurisdiction of the Residential Tenancy Act. Section 4 of the *Residential Tenancy Act*, addresses what the *Act* does not apply to. It states that the *Act* does not apply to living accommodation as vacation travel or accommodation.

Conclusion

I decline to hear the applicants' application as I have do not have jurisdiction to hear the applicants' application and the *Residential Tenancy Act* does not apply to this matter.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: August 12, 2019

Residential Tenancy Branch